

**ASSEMBLY BILL**

**No. 388**

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**Introduced by Assembly Member Roger Hernández**

February 14, 2011

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An act to amend Section 1534 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 388, as introduced, Roger Hernández. Criminal procedure: search warrants: tracking devices.

Existing law provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing or things, and the place to be searched. Existing law provides that a search warrant shall be executed and returned within 10 days after date of issuance.

This bill would establish rules regarding tracking device search warrants. The bill would provide that the length of time that a tracking device may be used shall not exceed 45 days, except as specified. The bill would provide that an officer executing a tracking device search warrant shall not be required to knock and announce his or her presence before executing the warrant. The bill would provide that no later than 10 calendar days after the use of the tracking device has ended, the officer who executed the tracking device warrant shall serve a copy of the warrant on the person who was tracked or whose property was tracked. Because this bill would require local law enforcement officials to perform additional duties, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1534 of the Penal Code is amended to  
2 read:

3 1534. (a) A search warrant shall be executed and returned  
4 within 10 days after date of issuance. A warrant executed within  
5 the 10-day period shall be deemed to have been timely executed  
6 and no further showing of timeliness need be made. After the  
7 expiration of 10 days, the warrant, unless executed, is void. The  
8 documents and records of the court relating to the warrant need  
9 not be open to the public until the execution and return of the  
10 warrant or the expiration of the 10-day period after issuance.  
11 Thereafter, if the warrant has been executed, the documents and  
12 records shall be open to the public as a judicial record.

13 (b) (1) *A tracking device search warrant shall identify the*  
14 *person or property to be tracked and specify a reasonable length*  
15 *of time, not to exceed 45 days from the date the warrant is issued,*  
16 *that the device may be used. The court may, for good cause, grant*  
17 *one or more extensions for the time that the device may be used,*  
18 *with each extension lasting for a reasonable length of time not to*  
19 *exceed 45 days. The search warrant shall command the officer to*  
20 *execute the warrant by installing a tracking device or serving the*  
21 *warrant on a third-party possessor of the tracking data. The officer*  
22 *shall perform any installation authorized by the warrant during*  
23 *the daytime unless the judge, for good cause, expressly authorizes*  
24 *installation at another time. Execution of the warrant shall be*  
25 *completed no later than 10 days immediately after the date of*  
26 *issuance. A warrant executed within this 10-day period shall be*  
27 *deemed to have been timely executed and no further showing of*

1 *timeliness need be made. After the expiration of 10 days, the*  
2 *warrant shall be void, unless executed.*

3 *(2) An officer executing a tracking device search warrant shall*  
4 *not be required to knock and announce his or her presence before*  
5 *executing the warrant.*

6 *(3) No later than 10 calendar days after the use of the tracking*  
7 *device has ended, the officer executing the warrant shall file a*  
8 *return to the warrant.*

9 *(4) No later than 10 calendar days after the use of the tracking*  
10 *device has ended, the officer who executed the tracking device*  
11 *warrant shall serve a copy of the warrant on the person who was*  
12 *tracked or whose property was tracked. Upon the request of a*  
13 *government agency, the judge may, for good cause, delay service*  
14 *of a copy of the warrant.*

15 *(5) As used in this section, "tracking device" means any*  
16 *electronic or mechanical device that permits the tracking of the*  
17 *movement of a person or object.*

18 ~~(b)~~

19 *(c) If a duplicate original search warrant has been executed, the*  
20 *peace officer who executed the warrant shall enter the exact time*  
21 *of its execution on its face.*

22 ~~(e)~~

23 *(d) A search warrant may be made returnable before the issuing*  
24 *magistrate or his court.*

25 SEC. 2. If the Commission on State Mandates determines that  
26 this act contains costs mandated by the state, reimbursement to  
27 local agencies and school districts for those costs shall be made  
28 pursuant to Part 7 (commencing with Section 17500) of Division  
29 4 of Title 2 of the Government Code.